Appendix

Stipulation of Facts from the Record in the Supreme Court of the United States in McClung v. Silliman, 6 Wheaton 598

(State of Ohio, Muskingum County)

Supreme Court October Term 1815

Monday 16th inst.

William McClung

vs.

Wyllis Silliman
Register of land office

Upon a rule to show cause why a mandamus should not be issued. By consent of the parties this rule is enlarged till tomorrow morning.—Supreme court October term 1815. Nineteenth Ins.

On motion for a rule to show cause why a mandamus should not issue against him to compel him to admit the entries of the application in the order of the last term made in this cause. It is agreed between the parties that on the second of August one thousand and eight hundred and ten the applicant regularly applied to the defendant to make entry of his application for entire section number Six Township twelve, Range thirteen, with the fraction number five same Township and range lying north of said section, also for entire section number twelve with the fraction number one north thereof in the township numbered sixteen Range fourteen, and produced the receivers receipts for the 1/20 part of the purchase money of each. That the defendant refuses to enter the said application,—first, because the said lands had been before sold at Marietta except that part of section number six lying east of the river, prior to

the time of the establishment of the land office of Zanesville and prior to the erection of the Zanesville district—second, because if not sold the said tracts had never been offered at Publick sale in the Zanesville district—third, because the part of number six lying east of the River had before the time of the plaintiffs application been offered for sale at Publick auction at Zanesville and afterwards and before such application had been sold at private sale according to law and was sold singly as fraction, and was one of the sales of fractions made according to the secretary's order, pursuant to the act of eighteen hundred and four. The parties agree as part of this case the Platt hereto annexed with all the notes, letters and figures thereon. They further agree that section twelve and the part of section six lying west of the river Muskingum, also the part of fraction number five lying west of the said river and the fraction number one, all appearing on the said Platt were sold together to Increase Mathews and Levi Whipple at the Publick sales at Marietta in the year eighteen hundred and one, for which a patent issued to Increase Mathews Levi Whipple & Rufus Putnam, dated the twenty first day of February one thousand eight hundred and three which Patent hereto annexed is agreed as part of this case.—They further agree that the fraction number five appearing on the said Platt was sold as a fraction united with another tract lying due east of it, and contained by the lines of the South Military boundary lines the north of said fraction, each produced east three hundred and four Poles and a line from these points parallel with the eastern Boundary of the said fraction number five was sold at Marietta to John McIntire together with that part or fraction number one which lies east of the Muskingum river by the description of east fraction number one, who has made full payment therefor but has not received his patent—the last purchase above mentioned was made in January one thousand eight hundred and three.—

The Parties further agree, the colours on said Platt to be true representations of the river Muskingum Licking and Zanes' Grant which was made in May one thousand seven hundred and ninety six by a law of that date. The parties agree that the river aforesaid is a navigable stream. The sales above stated to have been made at Marietta were returned by the surveyor General to the Zanesville office in one thousand eight hundred and four, before they proceeded to do business as having been sold at Marietta and therefore were never offered at Publick sale in the Zanesville District—they further agree that the surveyor General in executing the surveys of the publick lands Northwest of the river Ohio and above the mouth of the Kentucky river, returned the same from the south boundary of the Military lands appearing on the said Platts down to the Ohio company's purchase on the official platts all along the river in the manner appearing on the platts annexed in the entire townships numbered as such intersected by the river and has divided the townships intersected into entire sections, crossing the river, shewing the distance of each from its east and from its west boundary to the river, and distance, across the river and in the return of the quantity of each section intersected deducting the area of the river bed and describing the quantity of each tract on the different sides of the river in the manner appearing on the said Platt annexed which so far as the same goes is a true copy from the surveyor Generals record. The parties further agree that the sale of the property contained in the said patent made part of this case was made in Marietta in one entire Sale under the direction of the Surveyor General and the Governor of the Territory—they further agree that the section four being the tract before described lying east of the said fraction number five lies on the North side of the Township containing it, and is bounded on the north by the south bounds of the United States Military tract. They

agree that this agreed case shall not be considered on the defendants part as a waiver of the question of Jurisdiction, and that the case be now considered as on a motion for a preemptory Mandamus waiving preliminary proceedings. The parties further agree, that altho the law establishing the Zanesville district passed in March one thousand eight hundred and three, an office was not opened there until the twenty first day of May one thousand eight hundred and four.—And they lastly agree that all the official Platts and notes thereon or accompanying the platts now filed in the office of the treasury Department of the seventh Ranges and of the lands northwest of the river Ohio and above the mouth of Kentucky river be considered as parts of this case and to be referred to, by either party, in the Supreme court of the United States if this case shall be taken to that court without being copied into the record of this court.